

Application No. 10/707,526
Docket No. A3-1700
Amendment dated August 5, 2005
Reply to Office Action of June 6, 2005

REMARKS

In the Office Action, the Examiner reviewed claims 1-20 of the above-identified US Patent Application, with the result that a restriction requirement was withdrawn, an election requirement was maintained, and all of the claims were rejected either under 35 USC §102 as being anticipated by U.S. Patent No. 2,006,643 to Leo or under 35 USC §103 as being unpatentable over Leo in view of U.S. Patent No. 2,575,770 to Shadduck. Applicants respectfully request reconsideration for the following reasons.

Independent claims 1 and 14 are reproduced below for the convenience of the Examiner.

Claim 1: A method of cutting food product, the method comprising the steps of:
 providing a cutting means comprising at least one cutting element disposed in a cutting plane that is not vertical;
 individually delivering food products to the cutting means by causing the food products to free-fall through a feed passage and then free-fall through the cutting means entirely under the force of gravity and on a path that is approximately normal to the cutting plane; and
 contacting the food products and positioning the food products so that they free-fall on the path at a predetermined location within a cross-section of the feed passage as the food products free-fall through the feed passage and prior to encountering the cutting means so as to produce size-reduced products of substantially consistent size and shape.

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Claim 14: A method of cutting food product, the method comprising the steps of:

individually delivering food products to a cutting means comprising at least one cutting element disposed in a cutting plane that is not vertical by causing the food products to free-fall through a feed passage and then free-fall through the cutting means entirely under the force of gravity and on a path that is approximately normal to the cutting plane; and

contacting the food products and positioning the food products with a plurality of resilient members extending radially inward into the feed passage toward a central axis thereof, the resilient members causing the food products to free-fall on the path at a predetermined location within a cross-section of the feed passage as the food products free-fall through the feed passage and prior to encountering the cutting means so as to produce size-reduced products of substantially consistent size and shape.

The explanation for the §102 rejection was that

Leo discloses all the recited steps of the invention including:

...
 b) individually delivering food products to the cutting means by causing the food products to free-fall through a feed passage (at 20) and then free-fall through the cutting means entirely under the force of gravity . . . (page 2, left col., lines 56-57 and right col., lines 13-23);

In their Amendment filed April 18, 2005, Applicants contended that Leo does not disclose "causing the food products to . . . free-fall through the cutting means entirely under the force of gravity," specifically citing the following passage that was relied on by the Examiner for such teachings in both the

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previous and present Office Actions.

With the plunger arm 43 in extended position, material within the vertical receptacle 20 falls by gravity or by mechanical force, exerted by the plunger, *onto the plate 37*. The plunger arm 43 is *then* forced inwardly by pushing on the handle 44, thereby forcing the knife 42 through the material to cut the slice therefrom. (Emphasis added.)

Leo at page 2, left col., lines 55-61.

The response to this argument in the present Office Action was:

Applicants contend that Leo does not disclose the limitation "causing the food products to . . . free-fall through the cutting means entirely under the force of gravity."

As set forth above, Leo does disclose such a limitation. A food product falls by gravity through the cutting means (50). See (page 2, left col., lines 55-57 and right col., lines 13-23).

However, Applicants do not see anything at page 2, lines 55-57, that supports the Examiner's conclusions, nor do Applicants find anything in the second passage cited by the Examiner, which states in its entirety:

If it is desired to dice the material being sliced or separate it into parts having any desired shape, a die 50 such as is shown in Fig. 6 may be used. The die 50 may be merely a coarse mesh wire screen 51 or a series of crisscross knife blades secured to a ring 52 for mounting within the neck 46 of the top plate 40. The material, such as jelly, in the receptacle 20 is extruded through the screen and then sliced to form cubes or blocks of the desired size.

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Again, Applicants cannot find any basis for the Examiner's interpretation that Leo discloses or suggests the requirement in Applicants' independent claims 1 and 14 that the material free-falls through a cutting means. At best, Leo discloses cutting a material after it has free-fallen onto and is resting on a plate 37 while a knife 42 is forced horizontally through the material (see page 2, left col., lines 55-61), or extruding a material through a screen 51 before horizontally slicing the material with the knife 42 (see page 2, right col., lines 13-23).¹

In view of the above, Applicants cannot see, and the Examiner has not explained, how the Examiner is interpreting the above passages from Leo to disclose a product "free-fall[ing] through the cutting means entirely under the force of gravity" The Examiner's interpretation is completely inconsistent with the fact that the knife 42 could not possibly be operated to make horizontal cuts through the material if the material were being extruded at the speed of a free-falling material.

¹ Without any express teachings to the contrary, Applicants interpret Leo's extrusion step to be performed with the plunger 24. Applicants believe such an interpretation is consistent with the ordinary meaning of the word "extrusion." Such an interpretation is also consistent with the fact that the knife 42 could not possibly be operated to make horizontal cuts through the material if it were being extruded at the speed of a free-falling material.

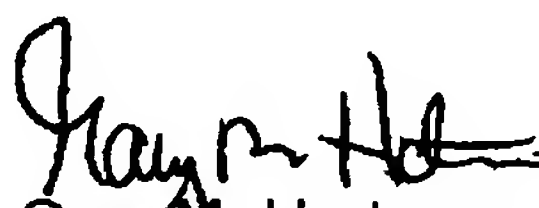
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Applicants respectfully request that the Examiner reconsider the rejection under 35 USC §102 based on Leo, as well as the rejection under 35 USC §103 for the same reasons.

If the Examiner maintains the rejection, Applicants must request that the Examiner explain in detail how he is interpreting Leo to disclose a product "free-fall[ing] through the cutting means entirely under the force of gravity" Otherwise, Applicants would be unfairly denied the opportunity to learn what the Examiner's explanation would be on appeal or in response to a continuation application.

If the Examiner believes a phone interview would be more productive, Applicants' undersigned representative would welcome such an opportunity.

Respectfully submitted,

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